HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 852 of 2003

Judgment reserved on: 8.5.2007.

Date of Decision: 16.5.2007

Mukhtiar Singh, ……. Petitioner

Versus

Union of India & Others …….. Respondents.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting? Yes.

For the petitioner : Mr. Sandeep Kaushik, Advocate.

For the respondents : Mr. Sandeep Sharma, Assistant Solicitor General of India.

Sanjay Karol, J.

Petitioner has assailed the order dated 29th May, 2003 (P-2). Narration of facts as laid down in the petition are that the petitioner applied for the post of Sepoy / JDO with the respondent – CRPF and after undergoing the recruitment process of clearing written and physical examination, he was offered appointment to the post of Constable (GD) vide communication dated 30th January, 2003. Petitioner was offered the post in the pay scale of Rs.3050-75-3950-80-4950. Petitioner joined the respondent on 1st of February, 2003 and was posted at Moaklaghat on 14th February, 2003. Thereafter, his further medical examination was successfully conducted and he was sent for further training at Recruitment Training Centre-I. While undergoing training for more than 3½ months,

the petitioner was served with the impugned order dated 29th May, 2003, whereby his offer of appointment for the post of Constable/GD in CRPF issued vide office letter dated 31st January, 2003, was cancelled. Petitioner was consequently sent back home without payment of any salary. Petitioner's father is stated to have made a representation, which has not been responded to. It has been further stated that the petitioner is fully eligible hailing from Dogra community and has been selected by passing through recruitment test

Notice was issued and respondents had filed their reply, inter alia contending that the respondent – CRPF has framed guidelines for recruitment of Ct/ GD in CRPF and in terms thereof petitioner was wrongly selected as he was not entitled to the relaxation of 2 Cms. in height, as applicable in the cases of wards of the employees of the CRPF for the reasons that while fixing the height in Clause 3 of the guidelines, standard with regard to the height already stood relaxed.

Mr. Sandeep Kaushik, learned counsel for the petitioner argued that the impugned order is bad for infraction of principles of natural justice and also being an unreasoned order. Learned counsel has further argued that being son of an employee, the petitioner is entitled to relaxation of height to the extent of 2 Cms in terms of the guidelines. Therefore, the petitioner hailing from Dogra community, of Himachal Pradesh is entitled for relaxation and, therefore, fully meets the eligibility criteria of selection.

Learned counsel for the respondents in response has argued that since eligibility of height has already been relaxed in the cases of persons hailing from Himachal Pradesh, while prescribing the physical standards under Clause 3 of the guidelines, relaxation under Clause 18 of the same is not permissible.

I shall deal with the contentions as under:

For appreciation of the issue in its perspective, it will be fruitful to reproduce the relevant portion of the guidelines as under: -

"II ELIGIBILITY CONDITION FOR THE POST OF CONSTABLE.

1). Age : a) Between 18 to 33 years (cut off date as on Aug. 1st every year.

3) PHYSICAL STANDARDS:

States / UTs	**Height**	**Chest**	**Weight**
A. Male candidates for Tribals & Adivasis	162.5 Cms.	76.89 Cms.	Proportionate to height and age as per Medical standards
B. Males belonging to Hilly areas of Garhwal Kumaon, Himachal Pradesh, Gorkhas, Dogras, Marathas, Sikkims, Leh & Ladakh, Kashmir Valley and NE-States.	165 Cms.	78.33 Cms.	-do-

XVIII. RELAXATION FOR WARDS OF CRPF PERSONNEL.

A. The following relaxation in physical standard are granted to sons / daughters of CRPF personnel for enlistment in the Force by the competent authorities:-

i) Height : 2 Cms.
ii) Chest : 2 Cms.

Not more than one deficiency should be considered for condonation. Only one son or daughter shall be eligible for this concession. The entry of such enlistment on condonation should invariably be made in the service book of CRPF employee who has availed himself of this concession. This relaxation will not be applicable to such category of candidates who have already been granted relaxation in physical standards under CRPF Rules / GOI instructions. "

It is an admitted position that no notice before initiating action for withdrawal of letter of appointment was given to the petitioner. Nor was any opportunity of hearing afforded to him prior to the passing of the impugned order. It is also an admitted position that no reasons for withdrawal have been assigned therein.

In my view, the order needs to be set aside on this ground alone.

Reading of Clause 3 of which reliance has been placed by the respondents, would show that the eligibility of height in relation to all persons (males) hailing from the State of Himachal Pradesh, amongst other hilly States, has been fixed at 165 Cms. With regard to Tribals and Adivasis, the height fixed is 162 Cms. and with regard to all other States and Union Territories, the height is fixed 170 Cms. In my view, this is the standard of height prescribed by the respondent-CRPF with regard to all persons falling in the said categories. This has been done so keeping in view the physiological condition of the people. The standard has been laid down for all the persons falling in the categories in its entirety. It has not limited to the wards of employees of the CRPF. Clause 18 specifically stipulates that relaxation in physical standards up to the extent of 2 Cms. of height, is granted to the wards of CRPF personnels. Relaxation is restricted only up to one deficiency and one child and is also not applicable to such categories of candidates who have already been granted relaxation in physical standards under CRPF Rules / Govt. of India's instructions. Standard of height fixed in Clause 3 is not in exercise of powers under Clause 18. There is no material placed on record to show to the contrary. Clause 18 dealing with the relaxation of physical standards for wards of

CRPF personnels is independent of Clause 3 which generally lays down the physical standards required for recruitment.

In this view of the matter, the respondent authorities rightly exercised the power of relaxation to the extent of reduction of height by 2 Cms. and selecting the petitioner as a Sepoy. It is an admitted case of the parties that if the physical standards with regard to the petitioner's height is relaxed to the extent of permissible limit, then the petitioner is fully eligible At the time when the petitioner was appointed, his age was 20 years. The prescribed age is 18 - 33 years.

For all the aforesaid reasons, the order dated 29th May, 2003 is quashed and set aside. The respondent - CRPF shall take back the petitioner in service and post him at a suitable station. In the facts and circumstances of the case, petitioner, however, shall not be entitled for back wages. However, for the purposes of continuation in service and seniority, his original date of appointment shall continue to be reckoned with. The writ petition is accordingly allowed.

(Sanjay Karol),
Judge.

May 16, 2007
(rana)